IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 523

MIDDLETON & CO. (CANADA), LTD., *et al.*,

Petitioners,

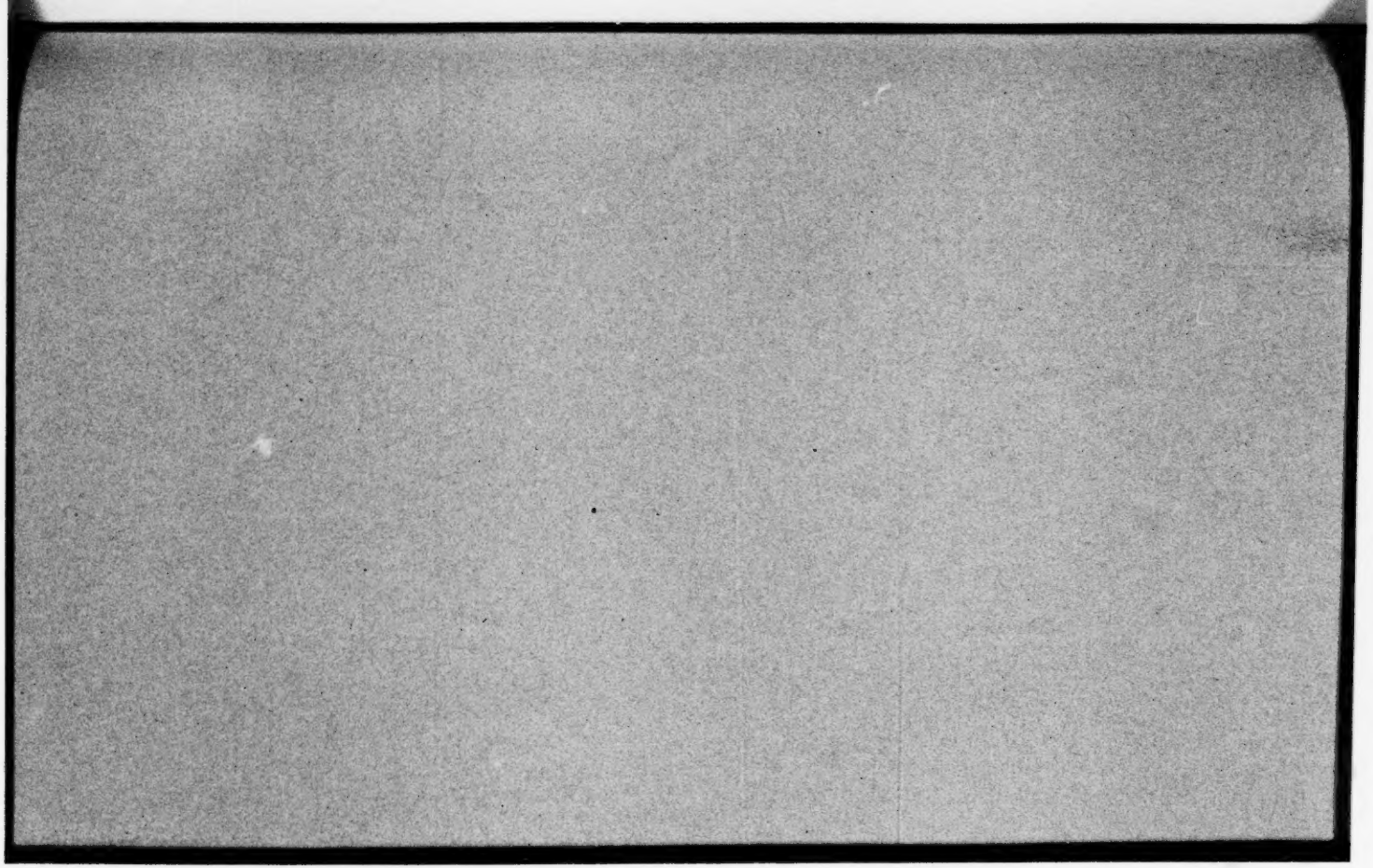
—against—

OCEAN DOMINION STEAMSHIP CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HENRY N. LONGLEY,
EZRA G. BENEDICT FOX,
Counsel for Petitioners.



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MIDDLETON & CO. (CANADA), LTD., et al.,
Petitioners,

—against—

OCEAN DOMINION STEAMSHIP CORPORATION,
Respondent.

The Petition of:

Middleton & Co. (Canada), Ltd.; Millers Products Corporation; Demerara Bauxite Company, Ltd.; Trinidad Agencies, Ltd.; West India Company, Ltd.; Aime Guertin, Limited; Connors Brothers, Ltd.; The Ogilvie Flour Mills Company, Ltd.; Lake-of-the-Woods Milling Company, Ltd.; Halifax Fisheries, Ltd.; Quoddy Sea Foods, Ltd.; H. T. Warne, Ltd.; G. P. Mitchell & Sons, Ltd.; The Steel Company of Canada, Ltd.; R. C. Pratt; R. C. Pratt, trading under the registered trade name of The Erie Flour Mills Company; R. C. Pratt, trading under the registered trade name of Toronto Export & Import Company; R. C. Pratt, trading under the registered trade name of Great Lakes Milling Company; F. I. Boates; J. Spencer Turner Company, Ltd.; A. M. Smith & Company, Ltd.; W. & C. H. Mitchell, Ltd.; Waterloo Bedding Company, Ltd.; Western Canada Flour Mills Company, Ltd.; Robin Hood Mills, Ltd.; James Pender & Company, Ltd.; Dominion Steel & Coal Corporation, Ltd.; W. M. Crombie & Co., Inc.; West India Oil Co. S. A.; Goodyear Tire & Rubber Company of Canada, Ltd.; Gutta Percha & Rubber, Ltd.; J. T. Swyers Company, Ltd.; International Milling Company, Ltd.; Standard Brands, Ltd.; O'Keefe's Brewing Company,

Ltd.; T. W. Hand Fire Works Company, Limited; The St. Lawrence Flour Mills Company, Limited; Libby, McNeill & Libby of Canada, Ltd.; Tors Cove Trading Co., Ltd.; Baine Johnston & Co., Ltd.; Henry Clement, Ltd.; Charles Mawdsley and James George Bullock McWhinnie, co-partners, trading under the firm name and style of Bowes & Kent; Pennington, Stevens & Taylor, Ltd.; Weiting & Richter, Ltd.; R. MacGuire & Co., Ltd.; A. D. Frischmann, trading as H. Frischmann; J. P. Santos & Co., Ltd.; Booker & Bros. McConnell & Co., Ltd.; Unilever, Ltd.; Harry St. George Butterfield, trading as Butterfield & Co.; Evan Hurst, trading as E. Hurst & Co.; Steers, Ltd.; William H. Scott, Ltd.; Charles Mercer; Canadian Canners, Ltd.; Kaufman Rubber Co., Ltd.; Monarch Battery Mfg. Co., Ltd.; Dominion Steel & Coal Corp., Ltd.; Eastern Car Company, Ltd.; James A. Lynch & Co., Ltd.; Murray & Gregory, Ltd.; T. Rankine & Sons, Ltd.; and McCormack & Zatzman, Ltd.; and Indemnity Insurance Company of North America, libellants' stipulator for costs;

for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Statement of the Matter Involved.

Your petitioners, Middleton & Co. (Canada) Ltd., et al., were the owners or representatives of the owners of cargo which was laden on the Norwegian S. S. "Iristo" at the Canadian ports of Halifax and St. John, in March, 1937, for carriage to Bermuda and ports in the West Indies. Respondent, the voyage charterer of the vessel, a New York corporation, issued the bills of lading for the cargo. The vessel with all her cargo was lost during the voyage.

Three separate libels were filed by the various cargo owners against the respondent in the United States District Court for the Southern District of New York to recover for the loss of the cargo. These libels were subsequently consolidated under the above title. The District

Court entered a decree dismissing the libels. Thereafter the petitioners appealed to the United States Circuit Court of Appeals for the Second Circuit which affirmed the decree of the District Court. The opinion of the Circuit Court of Appeals is reported at 137 F. (2d) 619 and it appears in the record at pages 753 *et seq.* The opinion of the United States District Court for the Southern District of New York is reported at 43 F. Supp. 29 and it appears in the record at pages 686 *et seq.*

None of the facts are in dispute: the factual evidence consists solely of the testimony of the ship's officers examined by the respondent, certain exhibits which it offered, and stipulations of the parties. The facts outlined in this petition are those found by the Circuit Court of Appeals supplemented by the findings of the District Court, none of which was reversed on appeal; and facts established by the testimony of respondent's witnesses and its exhibits. References to the opinion will be to that of the Circuit Court of Appeals.

Jurisdiction.

Jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution of the United States of America and under Section 240 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. Code, Sec. 347).

The Nature of the Case.

The S. S. "Iristo" was owned by a Norwegian corporation and time-chartered to Atlantic Maritime Corporation which sub-chartered her to respondent for the voyage which this litigation concerns (Opinion, Rec., p. 753). Respondent put the vessel on berth at Halifax and St.

John as a common carrier of cargo to Bermuda and West Indian ports.

After the "Iristo" had loaded her cargo at Halifax and St. John, she sailed with Bermuda as her first port of call. None of the ship's officers had ever before sailed to Bermuda (Opinion, Rec., p. 754). The approaches to Bermuda from the north are particularly dangerous because it is necessary to skirt an arc of submerged reefs which lie north of the islands at a distance of some 10 miles (Opinion, Rec., p. 754).

A number of months before the "Iristo" sailed on her voyage, the S. S. "Cristobal Colon" stranded on the reefs north of Bermuda (Opinion, Rec., p. 755). As she was a large passenger steamer of some 24,000 tons, her wreck was very conspicuous to a navigator approaching Bermuda from the north (Opinion, Rec., p. 755). Long before the "Iristo" sailed, both the British Admiralty and the U. S. Hydrographic Office had issued charts showing the location of the wreck (District Court Finding 27, Rec., p. 716; Stip., par. 9, Rec., p. 656).

Safe navigation of the "Iristo" in approaching Bermuda required that her chart disclose the existence, location and characteristics of this wreck (Opinion, Rec., pp. 754, 755, 757, 758). The only chart on the vessel relating to Bermuda did not disclose the existence of the wreck and none of the officers of the "Iristo" knew of its existence either when the vessel sailed or at the time of her subsequent stranding (Opinion, Rec., pp. 754, 757).

As the "Iristo" approached Bermuda, her position was fixed by four-point bearings on North Rock Beacon lying outside the northern reefs (Opinion, Rec., p. 756). A course was then set which, if it had been followed, would have carried the vessel clear of all dangers (Opinion, Rec., p. 757). However, some time thereafter the second mate on watch and the master sighted the "Cristobal Colon"

which they erroneously assumed was a large passenger liner navigating toward them (Opinion, Rec., p. 756). On that assumption the master concluded that his small vessel of only some 1000 tons could navigate inshore of her with safety. He thereupon changed the course of the "Iristo" to starboard to make a port-to-port passage with this large vessel, which he thought was bearing down on him, in accordance with the International Rules of Navigation (Opinion, Rec., p. 756; District Court Finding 21, Rec., p. 715). Shortly thereafter the "Iristo" stranded because the change of course took her on the reef on which the "Cristobal Colon" was lying.

The "Iristo" was pulled off but as the result of bottom damage she sank shortly thereafter and became a total loss with all her cargo (Opinion, Rec., p. 756).

The officers of the "Iristo" were ignorant that they were to sail to Bermuda until they arrived at Halifax (Opinion, Rec., p. 755). Upon learning that Bermuda was to be the first port of call for the discharge of cargo, the master attempted at Halifax to secure a large scale chart for navigation to Bermuda. No large scale chart was available there but a small scale chart (Admiralty Chart #360), which the master did not consider sufficient for his needs, was offered to him (Opinion, Rec., p. 754). As the vessel was to call at St. John to complete the loading of her cargo, the master did not purchase the chart offered him, expecting to secure a more satisfactory chart at St. John (Opinion, Rec., p. 754). The chart offered him at Halifax showed the position of the wreck of the "Cristobal Colon" although the master did not make sufficient examination of it to know of this (District Court Finding 27, Rec., p. 716).

At St. John the master was also unable to secure a large scale chart but again a copy of Admiralty Chart #360 was available, and the master purchased this copy for use in navigating to Bermuda (Opinion, Rec., p. 754).

The chart secured did not disclose the location or existence of the wreck of the "Cristobal Colon"; indeed it showed on its face that it had not been corrected since 1932, or five years before the voyage on which the master was sailing and four years before the "Cristobal Colon" was wrecked (Opinion, Rec., p. 754).* When the "Iristo" sailed and when she stranded, this was the only chart on the vessel covering navigation to Bermuda (Opinion, Rec., p. 754).

Both the master and the chief officer negligently assumed that the chart secured at St. John was correct and up to date, although any examination of it would have disclosed that it was five years out of date—as the last date of correction was marked on its face (Opinion, Rec., pp. 754, 755). There was ample data available both at Halifax and St. John whereby any chart secured could have been brought up to date, but no effort was made in this regard because of the officers' negligent assumption that the chart was already up to date (Opinion, Rec., p. 755).

When the "Iristo" sailed on her voyage, the ship's officers intended to rely upon the copy of chart #360 secured at St. John as it then was, for navigation in approaching Bermuda. As they assumed that this chart was up to date, they had no intention of making any correction of the chart during the course of the voyage; and they made none (Opinion, Rec., p. 755; Master, Rec., pp. 593-5; Chief Officer, Rec., pp. 623-626).

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* At one point in the opinion of the Circuit Court of Appeals (Rec., p. 754), it is stated that a copy of Chart #360 offered the master at St. John, showed the existence of the wreck. This is erroneous. The only copy of this chart offered the master at St. John was the one he purchased (District Court Finding 27, Rec., p. 716) which, as it contained no information concerning the wreck, caused the disaster, as the Circuit Court of Appeals found. There is no testimony that any chart depicting the wreck other than the one available at Halifax, was ever offered the master.

Some months before the arrival of the "Iristo" at Halifax, while in the respective ports of Boston and Philadelphia, the master had called at the branch Hydrographic Offices in those cities and secured at each a collection of booklets containing Hydrographic Office Notices to Mariners. In one of the booklets included in each collection, was adequate data concerning the existence and location of the wreck of the "Cristobal Colon" and describing the wreck as "conspicuous" (Opinion, Rec., p. 754). The ship's officers glanced through these booklets when they were secured for data concerning their immediately subsequent voyages (Opinion, Rec., pp. 754-5; Master, Rec., pp. 574, 576; Chief Officer, Rec., pp. 618-619, 635). No study of them was made in relation to Bermuda as the officers were not then aware that they were ever going to sail there. None of the officers noted the data in relation to a wreck off Bermuda (Opinion, Rec., p. 755; Master, Rec., pp. 599-600; Chief Officer, Rec., p. 635).

The Notice to Mariners secured at Philadelphia which contained data concerning the wreck, was kept with a large bundle of other Notices in the master's private dining room where it was not available to anyone other than the master (District Court Finding 28, Rec., p. 717; Master, Rec., pp. 555, 576, 600). The Notice secured at Boston which contained data in relation to the wreck, was placed in a large pile of other Notices to Mariners in a drawer in the chart room (Master, Rec., p. 579; Chief Officer, Rec., pp. 625-6).

None of the Notices to Mariners was ever examined by the ship's officers to ascertain if they contained any data in relation to Bermuda after they learned that they were to sail there, and they did not know that there was any information in them in relation to Bermuda (Master, Rec., pp. 585, 599-600; Chief Officer, Rec., pp. 626, 635; Second Officer, Rec., pp. 519, 529).

The officers remained in ignorance of the existence of the wreck of the "Cristobal Colon" up to the time of the stranding of the "Iristo" (Opinion, Rec., pp. 756-7).

The Decision of the Circuit Court of Appeals.

The Circuit Court of Appeals held:

(1) That the stranding and subsequent loss of the "Iristo" resulted from the omission from her Bermuda chart of any data in relation to the existence and position of the wreck of the "Cristobal Colon"; and that to have a correct and up-to-date chart which could be safely employed in her navigation, the position of the wreck should have been marked thereon (Opinion, Rec., pp. 755-8).

(2) That the officers of the "Iristo" were negligent, before the vessel sailed on her voyage, in assuming that the Bermuda chart secured was correct and up to date when it showed on its face that it was not; and in not bringing this chart up to date to disclose the existence and position of the wreck of the "Cristobal Colon" from the Notices to Mariners available on shore at Halifax and St. John (Opinion, Rec., p. 755).

(3) That, as the owner of the "Iristo" had used due diligence in engaging the ship's officers, the carrier was not liable for their negligence in omitting to correct the chart or examine the Notices to Mariners available on shore (Opinion, Rec., p. 755).

(4) That the "Iristo" was seaworthy when she sailed on her voyage because she was equipped with a chart of sufficient scale for navigation in approaching Bermuda and because there was data physically on board the vessel by which the chart could have been corrected during the voyage to show the existence and position of the wreck of the "Cristobal Colon" (Opinion, Rec., pp. 758, 759).

(5) That the officers of the "Iristo" were negligent, during the course of the voyage, in not correcting the chart to show the wreck and that their negligence related to management and navigation of the vessel within the exemptions of Article IV (2)[a] of the Canadian Water Carriage of Goods Act (Opinion, Rec., p. 758).

Since the shipments in question were carried by sea from a Canadian port in 1937, the rights of the cargo owners and the duties and immunities of the carrier are governed, as the Circuit Court of Appeals held (Opinion, Rec., p. 757), by the provisions of the Canadian Water Carriage of Goods Act of 1936 (1 Edward VIII, Chap. 49), printed at pages 643-653 of the record. Its provisions, so far as concern the questions of law here involved, are identical with the provisions of the British Carriage of Goods by Sea Act of 1924 (14 and 15 Geo. V, c. 22) and the United States Carriage of Goods by Sea Act of 1936 (46 U. S. Code, Sec. 1300-1316). All three Acts give statutory effect to the so-called Hague Rules adopted by the Brussels Convention for the Unification of Certain Rules relating to Ocean Bills of Lading, which have also been enacted into law in many other countries. (For a list of such countries see Table at pp. 75-80 of *Knauth on Ocean Bills of Lading.*) The House of Lords and the Privy Council in England have already dealt with a number of cases interpreting these Rules. This Court, however, has to date not passed thereon.

The Questions Presented.

1. *Do the exemptions of Article IV, subsection 2 (a) of the Hague Rules* (46 U. S. Code, Sec. 1304, subsection 2 (a)) include negligence of a ship's officers in the management of the ship before sailing?*

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* The provisions of the Hague Rules applicable to this case, are set out in an Appendix to the brief.

In the instant case the chart secured for use in the navigation of the "Iristo" off Bermuda disclosed on its face that it was five years out-of-date. Means to bring the chart up to date before the voyage commenced were available; but no steps were taken in this regard before sailing because of the officers' negligent assumption that the chart was already correct and up-to-date; and, because of that negligent assumption, there was no intention to do anything about the chart after sailing.

The Circuit Court of Appeals held (Opinion, Rec., p. 755) that even under such circumstances the vessel was seaworthy and the carrier was entitled to exoneration from liability by virtue of Article IV, subsection 2 (a), of the Hague Rules (46 U. S. Code, Sec. 1304, subsection 2 (a)), which reads:

> "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from: (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship; * * *."

The English courts have held that this provision is to be read in the light of, and construed in harmony with, the interpretation heretofore given by the courts to the similar exemption contained in Section 3 of the Harter Act (46 U. S. Code, Sec. 192).* *Hourani* v. *Harrison*, 32 Com. Cases 305, at pp. 313, 315; *Foreman & Ellams, Ltd.* v. *Federal Steam Nav. Co.*, (1928) 2 K. B. 424, at p. 440; *Gosse Millerd* v. *Canadian Govt. Merchant Marine*, (1929) A. C. 223.

See also *Spencer Kellogg & Sons* v. *Great Lakes Transit Corp.* (*The Fred. W. Sargent*), 32 F. Supp. 520 at pp. 529-530 (E. D. Mich.).

The ruling of the Circuit Court of Appeals for the

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* The provisions of Section 3 of the Harter Act, are set out in an Appendix to the brief.

Second Circuit in the present case is in conflict with the interpretation given to Section 3 of the Harter Act by this Court and by the Circuit Courts of Appeals for the Fourth, Sixth and Ninth Circuits.

In *Int. Nav. Co.* v. *Farr & Bailey Mfg. Co.*, 181 U. S. 218, the vessel owner claimed exemption from liability under Section 3 of the Harter Act (46 U. S. Code, Sec. 192), providing that a vessel owner shall not be responsible "for damage or loss resulting from faults or errors in navigation or in the management of said vessel". There the negligence was that of the ship's officers, immediately before the commencement of the voyage, in not making secure certain porthole covers. Since they did not know that these covers were insecure at the time of sailing, they negligently assumed that everything was in order and had no intention of doing anything in respect of them after sailing.

The carrier argued that as its shore agents were in no way negligent and the negligence of the ship's officers related to management of the vessel, it was entitled to exemption from liability for damage to cargo which resulted from the porthole covers not having been made secure. This Court held (at p. 225):

> "And it is said that the owner does exercise such diligence by providing a vessel properly constructed and equipped, and that while he is responsible for the misuse or nonuse of the structure or equipment by his 'shore' agents, he exercises due diligence by the selection of competent 'sea' agents, and that he is not responsible for the acts of the latter, although they produce unseaworthiness before the commencement of the voyage.
>
> We cannot accede to a view which so completely destroys the general rule that seaworthiness at the commencement of the voyage is a condition precedent,

and that fault in management is no defence when there is lack of due diligence before the vessel breaks ground.

We do not think that a ship owner exercises due diligence within the meaning of the act by merely furnishing proper structure and equipment, for the diligence required is diligence to make the ship *in all respects* seaworthy, and that, in our judgment, means due diligence on the part of all the owners' servants in the use of the equipment before the commencement of the voyage and until it is actually commenced."

(at p. 226): "The obligation was to use due diligence to make her seaworthy before she started on her voyage, and the law recognizes no distinction founded on the character of the servants employed to accomplish that result.

We repeat that even if the loss occur through fault or error in management, the exemption cannot be availed of unless the vessel was seaworthy when she sailed, or due diligence to make her so had been exercised, and it is for the owner to establish the existence of one or the other of these conditions. *The word 'management' is not used without limitation, and is not, therefore, applicable in a general sense as well before as after sailing.*" (Italics ours.)

That, also, is the English law.

Dobell & Co. v. *Steamship Rossmore Co.*, (1895) 2 Q. B. 408 (C. A.), at pages 413-414, 416, 417.

In *The Newport*, 7 F. (2d) 452, the Circuit Court of Appeals for the Ninth Circuit held that negligence of the vessel's engineers in the management of the vessel immediately prior to sailing did not come within the exemptions of Section 3 of the Harter Act, but rendered the vessel unseaworthy. See also its ruling in *S. S. Wellesley Co.* v. *Hooper & Co.*, 185 Fed. 733.

The Circuit Court of Appeals for the Sixth Circuit made a similar ruling in respect of the non-applicability of Section 3 of the Harter Act to negligent acts of the ship's officers committed before the voyage was begun, in *Gilchrist Transp. Co.* v. *Boston Ins. Co.*, 223 Fed. 716.

See, also, *The Maria*, 91 F. (2d) 819 (C. C. A. 4), discussed *infra* at pages 14-15.

Petitioners respectfully submit that this Court should determine whether or not the same interpretation which has been given to the scope and meaning of the phrase "faults or errors * * * in the management of said vessel" as set out in Section 3 of the Harter Act, should be given to the phrase "act, neglect, or default of the master, mariner * * * in the management of the ship" in Article IV, subsection 2 (a), of the Hague Rules (46 U. S. Code, Sec. 1304, subsection 2 (a)), and resolve the conflict as to the meaning of virtually identical exemptions now existing between the Circuits, by reason of the ruling in the instant case.

2. *Within the meaning of Article III, subsection 1 of the Hague Rules (46 U. S. Code, Sec. 1303, subsection 1), is there any difference, with respect to the carrier's responsibility, between charts and other navigating equipment on the one hand, and the physical structure of the vessel on the other.*

Article III, subsection 1 of the Hague Rules (46 U. S. Code, Sec. 1303, subsection 1) provides that:

> "The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to (a) make the ship seaworthy; (b) properly man, equip, and supply the ship; * * *."

The Circuit Court of Appeals assumed that if negligence before the commencement of a voyage relates to a vessel's navigational equipment, a different principle is applicable than if the negligence relates to the physical structure of the vessel (Opinion, Rec., pp. 758-9). Petitioners submit that there is no difference in the principle applicable.

That issue was discussed and determined by the Circuit Court of Appeals for the Fourth Circuit in the case of *The Maria* (*supra*). There, as the court pointed out (91 F. (2d) at p. 821):

> "at the time of the accident, she was in fact navigated in reliance upon the faulty charts and navigational data which the master produced when his deposition was taken, and that, as a result, the stranding took place."

The court stated the question of law to be (at p. 820):

> "* * * whether the failure to furnish a ship with correct charts and similar data at the beginning of her voyage constitutes a lack of due diligence on the part of her owner to make her seaworthy, or is merely an error of navigation on the part of her master."

The court held (at p. 824):

> "Our view of the law, now that the point has been definitely raised, is that charts, light lists, and similar navigational data are essential equipment for the safe navigation of a ship, that she is unseaworthy without them, and it is the duty of her owner to supply them. Such documents of course become sources of information for the navigator, and the task of securing them is often delegated to officers of the ship. Failure to supply adequate information or navigation without it may thus constitute negligent navigation or management for which they are chargeable; but it does not follow that the owner is thereby relieved by

> the Harter Act from liability from ensuing disaster, because the same circumstances may also amount to failure on his part to use due diligence to make his vessel seaworthy. The duty of an owner in this respect is non-delegable; and the navigation of a ship defectively equipped by a crew aware of her condition does not relieve the owner of his responsibility or transform unseaworthiness into bad seamanship."

The conflict between the holding of the Circuit Court of Appeals for the Second Circuit in the instant case and that of the Circuit Court of Appeals for the Fourth Circuit in *The Maria* (*supra*) is, we think, clear.

3. *Does the fact that means are available on board to correct a defective condition render a vessel seaworthy notwithstanding the fact that both the defective condition and the availability of means to correct it are unknown to the vessel's officers?*

The antiquated chart secured at St. John by the officers of the "Iristo", coupled with their negligent assumption that it was correct and up to date; and the fact that they never intended to make any correction of the chart or examine any Notices to Mariners during the course of the voyage because of that assumption, was advanced by petitioners both in the Circuit Court of Appeals and in the District Court as the principal basis for their submission that the "Iristo" was unseaworthy.

The Circuit Court of Appeals held that the physical existence on the vessel of Notices to Mariners giving adequate data in relation to the wreck of the "Cristobal Colon" by which the chart could have been corrected, made the "Iristo" reasonably fit for navigation, even though the ship's officers were ignorant that the data was available, had no intention of searching for any such

data, and intended to use the chart in its uncorrected condition because of their negligent assumption from the start that it needed no correction (Opinion, Rec., pp. 754-5, 758-9).

Petitioners submit that under the facts of this case, the vessel was as inadequately equipped as if no data whatever concerning the wreck had been on board and was, therefore, unseaworthy for the voyage to Bermuda.

In considering the opinion of the Circuit Court of Appeals it will be noted that it accepts the general proposition that a vessel may be unseaworthy by reason of the ignorance of her officers of some defective or abnormal condition which requires special attention (Rec., pp. 758-9). Among the cases which it cites in this connection is its own earlier decision in the case of *The Elkton*, 49 F. (2d) 700, from which this Court quoted with approval in the case of *May* v. *Hamburg-Amerikanische etc.*, 290 U. S. 333 at page 348. The court distinguished the present case, however, on the ground that the rule applied in cases like *The Elkton* is limited to the physical structure of the vessel and has no application to navigational equipment such as charts. The opinion suggests also that the principle of these cases applies only where the owner is guilty of some personal fault or neglect (Rec., pp. 755, 758-9). We submit that neither of these suggested distinctions is tenable either on principle or authority. In this connection we rely upon the following cases which will be discussed in the brief submitted herewith:

Int. Nav. Co. v. *Farr & Bailey Mfg. Co.* (*supra*);
The Maria (*supra*);
The Elkton (*supra*);
The Fred E. Hasler, 55 F. (2d) 919 at p. 921 (C. C. A. 2);

The Pres. Polk-Pres. Adams, 43 F. (2d) 695 (C. C. A. 2);
The Schwan, 1909 A. C. 450, 461-3;
Standard Oil Co. of N. Y. v. *Clan Line Steamers Ltd.*, 1924 A. C. 100;
The Lady Pike, 21 Wall. 1, at pp. 14-15;
Tait v. *Levi*, 104 Eng. Reprints 686;
The Rolph, 299 Fed. 52, at p. 54 (C. C. A. 9);
Northern Commercial Co. v. *Lindblom*, 162 Fed. 250, 254 (C. C. A. 9).

REASONS FOR ALLOWANCE OF THE WRIT.

(1) The law laid down in the present case is in conflict with the law as settled in the Fourth, Sixth and Ninth Circuits.

(2) The law in the present case is contrary to the principle of decisions of this Court and of the British House of Lords.

(3) The Hague Rules were designed to obtain international uniformity and this Court should resolve any conflict as to their proper interpretation.

(4) The questions presented are of great commercial importance. The decision below encourages a carrier to exercise no diligence whatever in relation to the navigational equipment of his vessel beyond the selection of the officers: under this decision a carrier can escape all liability for loss of cargo resulting from insufficiency of navigational equipment of his vessel by leaving the whole matter in the hands of ship's officers.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of

this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings of the case entitled on its docket "Middleton & Co. (Canada) Ltd., et al., Libellants-Appellants, v. Ocean Dominion Steamship Corporation, Respondent-Appellee, Consolidated Cause, Docket #18,624"; and that the said decree of the United States Circuit Court of Appeals for the Second Circuit be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioners will ever pray, etc.

Middleton & Co. (Canada), Ltd.; Millers Products Corporation; Demerara Bauxite Company, Ltd.; Trinidad Agencies, Ltd.; West India Company, Ltd.; Aime Guertin, Limited; Connors Brothers, Ltd.; The Ogilvie Flour Mills Company, Ltd.; Lake-of-the-Woods Milling Company, Ltd.; Halifax Fisheries, Ltd.; Quoddy Sea Foods, Ltd.; H. T. Warne, Ltd.; G. P. Mitchell & Sons, Ltd.; The Steel Company of Canada, Ltd.; R. C. Pratt; R. C. Pratt, trading under the registered trade name of The Erie Flour Mills Company; R. C. Pratt, trading under the registered trade name of Toronto Export & Import Company; R. C. Pratt, trading under the registered trade name of Great Lakes Milling Company; F. I. Boates; J. Spencer Turner Company, Ltd.; A. M. Smith & Company, Ltd.; W. & C. H. Mitchell, Ltd.; Waterloo Bedding Company, Ltd.; Western Canada Flour Mills Company, Ltd.; Robin Hood Mills, Ltd.; James Pender & Company, Ltd.; Dominion Steel & Coal Corporation, Ltd.; W. M. Crombie & Co., Inc.; West India Oil Co. S. A.; Goodyear Tire & Rubber Company of Canada, Ltd.; Gutta Percha & Rubber, Ltd.; J. T. Swyers Company, Ltd.; International Milling Company, Ltd.; Standard Brands, Ltd.; O'Keefe's Brewing Company,

Ltd.; T. W. Hand Fire Works Company, Limited; The St. Lawrence Flour Mills Company, Limited; Libby, McNeill & Libby of Canada, Ltd.; Tors Cove Trading Co., Ltd.; Baine Johnston & Co., Ltd.; Henry Clement, Ltd.; Charles Mawdsley and James George Bullock McWhinnie, co-partners, trading under the firm name and style of Bowes & Kent; Pennington, Stevens & Taylor, Ltd.; Weiting & Richter, Ltd.; R. MacGuire & Co., Ltd.; A. D. Frischmann, trading as H. Frischmann; J. P. Santos & Co., Ltd.; Booker & Bros. McConnell & Co., Ltd.; Unilever, Ltd.; Harry St. George Butterfield, trading as Butterfield & Co.; Evan Hurst, trading as E. Hurst & Co.; Steers, Ltd.; William H. Scott, Ltd.; Charles Mercer; Canadian Canners, Ltd.; Kaufman Rubber Co., Ltd.; Monarch Battery Mfg. Co., Ltd.; Dominion Steel & Coal Corp., Ltd.; Eastern Car Company, Ltd.; James A. Lynch & Co., Ltd.; Murray & Gregory, Ltd.; T. Rankine & Sons, Ltd.; and McCormack & Zatzman, Ltd.; and Indemnity Insurance Company of North America, libellants' stipulator for costs;

Petitioners.

By Henry N. Longley,
Ezra G. Benedict Fox,
Counsel for Petitioners.